5. Master and Servant (§ 258 (9)*)—Declaration Held Not to Show Injury from Independent Intervening Cause.—In an action by a servant for personal injuries received when two other servants fell from a narrow scaffold and plaintiff was struck with an iron band, held, that it cannot be said on demurrer to the declaration that plaintiff's injury was due to an independent intervening cause, to wit, the action of fellow servants of the plaintiff in falling and losing their hold and control of the iron band which struck the pliantiff.

Error to Circuit Court, Prince George County.

Action by Walter G. Hamlet against the E. I. Du Pont de Nemours & Co. Judgment for defendant, and plaintiff brings error. Reversed and remanded.

Thos. H. Howerton, of Waverly, and *Smith & Smith,* for plaintiff in error.

Plummer & Bohannan, of Petersburg, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* SMITH & HICKCS, Inc.

Jan. 20, 1921.

[105 S. E. 532.]

1. Street Railroads (§ 117 34)*) — Concurrent Negligence Held Question for Jury.—In an action for damages to automobile, struck by street car while being backed across street from garage driveway, concurrent negligence held a question for the jury.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 926]

2. Street Railroads (§ 103 (3)*) — Last Clear Chance Doctrine Stated.—If motorman discovered, or should have discovered, the danger of automobile being struck by street car before it was too late for him to slow down or stop, he would have the last clear chance to avoid the injury, and the railroad would be liable, regardless of the fact that negligence of automobile driver precipitated the situation and continued up to the moment of impact.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 842.]

3. Appeal and Error (§ 1064 (1)*)—Instructions in Irreconcilable Conflict Reversible Error, Where Case is Close.—Where the evidence is sufficient to warrant a verdict for either side, the giving of duly objected to instructions in such irreconcilable conflict upon vital points as to be liable to mislead the jury is reversible error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

4. Appeal and Error (§ 1170 (9)*) — Under Statute, Instruction Ignoring Contributory Negligence Held Not Ground for Reversal, in View of Other Instructions.—In action for damage to automobile,

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

struck by street car, in which the defense was contributory negligence, instruction directing verdict for plaintiff on finding of defendant's negligence, without reference to contributory negligence, held not ground for reversal, under Code 1919, § 6331, where court in five other instuctions required plaintiff's freedom from contributory negligence, and where court charged jury that the instructions should be construed together.

5. Appeal and Error (§ 1170 (1)*)—"Substantial Justice" Done When One Fair Trial on Merits Has Been Had.—"Substantial justice" has been attained in causes tried by juries, within Code 1919, § 6331, providing that no judgment shall be reversed where "Substantial justice" has been done, when litigants have had one fair trial on the merits.

[Ed. Note.—For other definitions, see Words and Phrases, Substantial Justice.]

6. Street Railroads (§ 99 (5)*)—Automobile Driver May Rely on Care on Part of Street Car Operator.—In an action for damages to an automobile, struck by a street car while being backed across street from garage driveway, instruction that plaintiff's employees had a right to assume that car would be operated with ordinary care held proper.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 842.]

7. Trial (§ 260 (1)*)—Refusal of Instruction Covered by Other Instructions Not Error.—Refusal of instruction, fairly and fully covered by other instructions, was not error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 604.]

Error to Hustings Court of Richmond.

Action by Smith & Hicks, Incorporated, against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Affirmed.

T. Justin Moore, E. R. Williams, A. B. Guigon, and *M. M. McGuire,* all of Richmond, for plaintiff in error.

Scott & Buchanan, of Richmond, for defendant in error.

KRITSELIS *v.* PETTY.

Jan. 20, 1921.

[105 S. E. 536.]

1. Negligence (§ 134 (10)*)—Evidence Held to Show Origin of Fire. — Testimony that defendant admitted to witnesses that he started a fire in some straw, and evidence that the fire so started was communicated to plaintiff's house, held sufficient to warrant the jury

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.